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IN THE

Supreme Court of the United States

October Term, 1943.

No. 945

THE COUNTRY GARDEN MARKET, INC., *Petitioner*,

v.

CHESTER BOWLES, Administrator, Office of Price Administration, *et al.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA, AND BRIEF IN SUPPORT THEREOF.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA, AND BRIEF IN SUPPORT THEREOF.

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petitioner, Country Garden Market, Inc., a body corporate, (hereinafter sometimes called the plaintiff) respectfully presents this petition for a writ of certiorari to review the final judgment of the United States Court of Appeals for the District of Columbia, rendered March 6, 1944, which affirmed the judgment of the District Court of the United States for the District of Columbia in favor of the respondents (hereinafter sometimes called the defendants) and against petitioner (R. 226).

Statement of Matter Involved.

The plaintiff, a retail grocery or "super-market" dealer, filed a Complaint in the District Court of the United

States for the District of Columbia (R. 1) seeking to enjoin the enforcement of a "suspension order" issued by the Office of Price Administration. Although appropriate motions for temporary restraining order and preliminary injunction were filed, the same, by consent or otherwise, were never finally acted upon until the Complaint was heard on its merits.

The judgment of the District Court (R. 33) dismissed the Complaint and said judgment was affirmed by the Court of Appeals (R. 226).

The petitioner is engaged in the Super Market food store business in Arlington County and Alexandria, both in the State of Virginia, and at the time of the filing of the Complaint in the District Court had four stores, employing over Three Hundred persons and having done in excess of Two Million Dollars ($2,000,000.00) business for the year preceding the filing of the Complaint (R. 2). The communities serviced by the petitioner's stores are thickly inhabited by war workers and government employees.

In February of 1943, the Office of Price Administration issued Procedural Regulation 4 (Fed. Reg. 1744) which attempts to set up an administrative tribunal which is presided over by a Hearing Administrator who is supposed to hear evidence in accordance with the rules set down in Procedural Regulation 4 to determine whether a "ration order or regulation" has been violated. If he determines that a "ration order or regulation" has been violated, he may then issue a "suspension order." A method of appeal within the Office of Price Administration is given, but no mention is made for an appeal to a judicial tribunal.

On March 20, 1943, the Office of Price Administration issued Ration Order 16, which deals with rationed foods and meats. In pursuance to provisions of Procedural Regula-

tion 4, suspension order proceedings were instituted against the petitioner in June 1943 (R. 6), charging ten violations of Ration Order 16, which are grouped as follows:

1. The sale of meat without requiring customers to surrender the proper amount of ration coupons.
2. That in bad faith petitioner sold meat which in its opinion was in imminent danger of spoilage at lower ration coupon values.

The alleged violations took place during April 10, 1943, and April 30, 1943, and rationing of meat began on March 29, 1943 (R. 186), and furthermore April 30, 1943, was the first-month period when some meat stamps became invalid and consequently the petitioner's stores were swamped with meat customers (R. 188). The Hearing Administrator found the plaintiff guilty of the violations charged in his Opinion and Order (R. 11) and ordered that plaintiff be prohibited from dealing in foods covered by Ration Order 16 for ninety days, but suspending all of the ninety days with the exception of fifteen days (R. 15).

If said suspension order is enforced the plaintiff will suffer irreparable damage to its good will, profits from sales in excess of One Hundred Thousand Dollars ($100,000.00) for the average fifteen day period, and in excess of Eight Thousand Dollars ($8,000.00) in perishable foodstuffs (R. 5). Furthermore, the enforcement of the suspension order will not in any manner aid the war effort for customers with ration coupons will use them in purchasing the same amount of meat in other stores so that nothing will be gained for the war effort except to penalize the plaintiff and its customers.

The Complaint in Paragraph 10 with Amendment (R. 4 and 26) sets forth the reasons for the invalidity of the suspension order and the hearings held therefor.

Therein it is contended that the defendant exceeds all the authority vested in it by Congress when it sets up an administrative tribunal to hear evidence and determine whether a suspension order should issue. This is precisely the same question involved in the case of L. P. Steuart and Brothers, Inc. versus Chester Bowles, Administrator, Office of Price Administration, *et al.*, No. 793, in which certiorari was recently granted and which is to be heard by your Honors shortly.

In addition the plaintiff contends that if Congress did delegate such sweeping power to the Office of Price Administration by virtue of Title III of the Second War Powers Act, Act of March 27, 1942, C199, Title III (56 Stat. 177) U. S. C. A. Title 50, App. 633,[1] the same is an unconstitutional delegation of legislative power.

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[1]-Title III of the Second War Powers Act amended Subsection (a) of Section 2 of the Act of June 28, 1940 (54 Stat. 676), as amended by the Act of May 31, 1941 (55 Stat. 236). The concluding sentence of Section 2 (a) (2) as finally amended by Title III of the Second War Powers Act, reads as follows:

"Whenever the President is satisfied that the fulfillment of requirements for the defense of the United States will result in a shortage in the supply of any material or of any facilities for defense or for private account or for export, the President may allocate such material or facilities in such manner, upon such conditions and to such extent as he shall deem necessary or appropriate in the public interest and to promote the national defense."

Section 2 (a) (5) provides as follows:

"Any person who willfully performs any act prohibited, or willfully fails to perform any act required by, any provision of this subsection (a) or any rule, regulation, or order thereunder, whether heretofore or hereafter issued, shall be guilty of a misdemeanor, and shall upon conviction, be fined not more than $10,000 or imprisoned for not more than one year, or both."

Section 2 (a) (6) reads in part as follows:

"The district courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States and the courts of the Philippine Islands shall have jurisdiction of violations of this subsection (a) or any rule, regulation or order or subpoena thereunder, whether heretofore or hereafter issued, and of all civil actions under this subsection (a) to enforce any liability or duty created by, or to enjoin any violation of, this subsection (a) or any rule, regulation, order, or subpoena thereunder whether heretofore or hereafter issued.

Also there was not any substantial evidence to justify the suspension order, even if it be conceded or found, that the Office of Price Administration has the power to hold such administrative hearings and that said ration regulations were valid and reasonable.

Jurisdictional Statement.

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, 28 U. S. C. 347 (a). The judgment of the United States Court of Appeals for the District of Columbia, of which review is sought, was entered on March 6, 1944.

Questions Presented.

1. Does Office of Price Administration have the statutory authority under Title III of the Second War Powers Act to hold suspension order hearings under Procedural Regulation 4 and to issue suspension orders?[2]

2. If statutory authority to hold administrative hearings was given by Congress, is the authority an unconstitutional delegation of legislative power?[3]

3. Are the ration regulations or orders as applied in this case valid, certain, and reasonable, and was there substantial evidence to justify a suspension order in this case?[4]

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[2] This is the same question as is presented to this Court in L. P. Steuart and Brothers, Inc., versus Chester Bowles, Administrator, Office of Price Administration, *et al.*, in which a writ of certiorari has been granted and which is to be argued shortly.

[3] Panama Refining Company versus Ryan, 293 U. S. 388.
A. L. A. Schechter Poultry Company versus United States, 295 U. S. 495.

[4] United States versus Cohen Grocery Company, 255 U. S. 81, 65 L. Ed. 516.
Republic Steel versus National Labor Relations Board, 331 U. S. 7.
Champlain Refining Corporation versus Corporation Commission of Oklahoma, 286 U. S. 210.
Hecht Company versus Chester Bowles, Administrator, Office of Price Administration, No. 316, United States Supreme Court, decided October Term, 1943.

Reasons for Allowance of Writ.

The plaintiff submits the following reasons for the allowance of a Writ of Certiorari to review the judgment of the United States Court of the District of Columbia:

1. The serious question here presented may well change our form of government for it must be determined whether the right to hold administrative hearings and issue drastic orders can be implied, *ipso facto*, from the mere creation of an administrative bureau by Congress.

2. The United States Court of Appeals of the District of Columbia has decided an important question of the applicability and construction of an Act of Congress, which has not, but which should be determined by this Court.

WHEREFORE, your petitioner respectfully submits that a writ of certiorari issue to the United States Court of Appeals for the District of Columbia, and submits herewith its brief in support of this petition.

Respectfully submitted,

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